

Senate File 340 - Introduced

SENATE FILE 340

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A BILL FOR

1 An Act relating to wage discrimination under the Iowa civil
2 rights Act of 1965, making penalties applicable, and
3 establishing an equal pay task force.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 216.6A, Code 2017, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 2A. It shall be an unfair or discriminatory
4 practice for any employer or agent of any employer to do any of
5 the following:

6 a. Require, as a condition of employment, that an employee
7 refrain from disclosing, discussing, or sharing information
8 about the amount of the employee's wages, benefits, or other
9 compensation or from inquiring, discussing, or sharing
10 information about any other employee's wages, benefits, or
11 other compensation.

12 b. Require, as a condition of employment, that an employee
13 sign a waiver or other document that requires an employee to
14 refrain from engaging in any of the activities permitted under
15 paragraph "a".

16 c. Discriminate or retaliate against an employee for
17 engaging in any of the activities permitted under paragraph "a".

18 d. Seek salary history information, including but not
19 limited to information on compensation and benefits, from
20 a potential employee as a condition of a job interview or
21 employment. This paragraph shall not be construed to prohibit
22 a prospective employer from asking a prospective employee what
23 salary level the prospective employee would require in order to
24 accept a job.

25 e. Release the salary history, including but not limited
26 to information on compensation and benefits, of any current
27 or former employee to any prospective employer in response to
28 a request as part of an interview or hiring process without
29 written authorization from such current or former employee.

30 f. Publish, list, or post within the employer's
31 organization, with any employment agency, job-listing
32 service, or internet site, or in any other public manner, an
33 advertisement to recruit candidates for hire or independent
34 contractors to fill a position within the employer's
35 organization without including the minimum rate of pay of the

1 position. The rate of pay may be by the hour, shift, day, week,
2 salary, piece, commission, or other applicable rate. The rate
3 of pay shall include overtime and allowances, if any, claimed
4 as part of the minimum wage, including but not limited to
5 tipped wages.

6 *g.* Pay a newly hired employee at less than the rate of pay
7 advertised for the employee's position under paragraph "f".

8 Sec. 2. Section 216.6A, subsection 3, Code 2017, is amended
9 to read as follows:

10 3. *a.* It shall be an affirmative defense to a claim arising
11 under [this section](#) if any of the following applies:

12 ~~*a.*~~ (1) Payment of wages is made pursuant to a seniority
13 system.

14 ~~*b.*~~ (2) Payment of wages is made pursuant to a merit system.

15 ~~*c.*~~ (3) Payment of wages is made pursuant to a system which
16 measures earnings by quantity or quality of production.

17 ~~*d.*~~ (4) Pay differential is based on any other factor other
18 than the age, race, creed, color, sex, sexual orientation,
19 gender identity, national origin, religion, or disability
20 of such employee, including but not limited to a bona fide
21 factor relating to education, training, or experience.

22 This affirmative defense shall apply only if the employer
23 demonstrates that the factor is not based on or derived from
24 a differential in compensation based on age, race, creed,
25 color, sex, sexual orientation, gender identity, national
26 origin, religion, or disability; is job related with respect
27 to the position in question; and is consistent with a business
28 necessity. For purposes of this subparagraph, "business
29 necessity" means an overriding legitimate business purpose
30 such that the factor relied upon effectively fulfills the
31 business purpose it is supposed to serve. This affirmative
32 defense shall not apply if the employee demonstrates that an
33 alternative business practice exists that would serve the same
34 business purpose without producing the wage differential.

35 *b.* An affirmative defense under this subsection is not

1 applicable unless one or more of the affirmative defenses
2 listed in paragraph "a" account for the entire pay differential
3 that is the subject of the claim.

4 Sec. 3. EQUAL PAY TASK FORCE AND REPORT.

5 1. An equal pay task force is created. The task force shall
6 consist of the following members:

7 a. The director of the civil rights commission, or the
8 director's designee.

9 b. The director of the department of human rights, or the
10 director's designee.

11 c. The director of the department of workforce development,
12 or the director's designee.

13 d. An employee of the labor market information division
14 of the department of workforce development designated by the
15 director of the department.

16 e. A representative of the association of business and
17 industry, appointed by the president of the association.

18 f. A member of a statewide labor organization appointed by
19 the president of the organization.

20 g. Two representatives of organizations whose objectives
21 include the elimination of pay disparities between men and
22 women and minorities and nonminorities and that have undertaken
23 advocacy, educational, or legislative initiatives in pursuit
24 of such objectives appointed by the director of the civil
25 rights commission in consultation with the leadership of those
26 organizations.

27 h. Two representatives of postsecondary education
28 institutions who have experience and expertise in the
29 collection and analysis of data concerning pay disparities
30 between men and women and minorities and nonminorities
31 and whose research has been used in efforts to promote the
32 elimination of such disparities appointed by the director of
33 the civil rights commission in consultation with the leadership
34 of those institutions.

35 i. Four members of the general assembly serving as

1 ex officio, nonvoting members, one representative to be
2 appointed by the speaker of the house of representatives, one
3 representative to be appointed by the minority leader of the
4 house of representatives, one senator to be appointed by the
5 majority leader of the senate, and one senator to be appointed
6 by the minority leader of the senate.

7 2. Membership of the task force specified in subsection 1,
8 paragraphs "d" through "h", shall comply with section 69.16A.

9 3. The task force shall study all of the following:

10 a. The extent of wage disparities, both in the public and
11 private sectors, between men and women and between minorities
12 and nonminorities.

13 b. Factors that cause, or which tend to cause, such
14 disparities, including segregation between women and
15 men and between minorities and nonminorities across and
16 within occupations, payment of lower wages for work in
17 female-dominated occupations, child-rearing responsibilities,
18 the number of women who are heads of households, education,
19 hours worked, and years on the job.

20 c. The consequences of such disparities on the economy and
21 affected families.

22 d. Actions likely to lead to the elimination and prevention
23 of such disparities.

24 4. The department of workforce development shall provide
25 staffing services for the task force.

26 5. The voting members shall elect a chairperson from the
27 voting membership of the task force. A majority of the voting
28 members of the task force constitutes a quorum.

29 6. Voting members of the task force shall receive
30 reimbursement for actual expenses incurred while serving
31 in their official capacity only if they are not eligible
32 for reimbursement by the organization that they represent.
33 Legislative members shall be paid the per diem and expenses
34 specified in section 2.10.

35 7. The task force shall submit a report regarding its

1 findings and its recommendations regarding potential actions
2 for the elimination and prevention of disparities in wages
3 between men and women and minorities and nonminorities to the
4 governor and the general assembly no later than December 21,
5 2018.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

9 This bill relates to wage discrimination under Iowa Code
10 chapter 216, the Iowa civil rights Act of 1965, and establishes
11 an equal pay task force.

12 WAGE DISCRIMINATION IN EMPLOYMENT. The bill establishes
13 additional unfair or discriminatory practices relating to wages
14 under Code section 216.6A. Penalty and remedial provisions
15 for discriminatory employment practices, including penalties
16 specific to wage discrimination, are applicable under Code
17 chapter 216 to violations of these requirements.

18 The bill prohibits an employer from requiring that an
19 employee refrain from disclosing, discussing, or sharing
20 information about the amount of the employee's wages, benefits,
21 or other compensation or from inquiring, discussing, or sharing
22 information about any other employee's wages, benefits, or
23 other compensation as a condition of employment. The bill
24 prohibits an employer from requiring that an employee sign a
25 waiver or other document that requires an employee to refrain
26 from engaging in any of those activities as a condition of
27 employment. The bill prohibits an employer from discriminating
28 or retaliating against an employee for engaging in any of the
29 activities.

30 The bill prohibits an employer from seeking salary history
31 information from a potential employee as a condition of a job
32 interview or employment. This provision shall not be construed
33 to prohibit a prospective employer from asking a prospective
34 employee what salary level the prospective employee would
35 require in order to accept a job.

1 The bill prohibits an employer from releasing the salary
2 history of any current or former employee to any prospective
3 employer in response to a request as part of an interview or
4 hiring process without written authorization from such current
5 or former employee.

6 The bill prohibits an employer from publishing, listing, or
7 posting within the employer's organization, with any employment
8 agency, job-listing service, or internet site, or in any other
9 public manner, an advertisement to recruit candidates for
10 hire or independent contractors to fill a position within the
11 employer's organization without including the minimum rate of
12 pay of the position. The rate of pay shall include overtime
13 and allowances, if any, claimed as part of the minimum wage,
14 including but not limited to tipped wages. The bill prohibits
15 an employer from paying a newly hired employee at less than the
16 rate of pay advertised for the employee's position.

17 Under current law, an employer has an affirmative defense
18 to a claim under Code section 216.6A if a pay differential
19 is based on any other factor other than prohibited wage
20 discrimination. The bill provides that an employer has an
21 affirmative defense to a claim under Code section 216.6A if a
22 pay differential is based on any other bona fide factor other
23 than prohibited discrimination, including but not limited
24 to a bona fide factor relating to education, training, or
25 experience. However, this defense shall only apply if the
26 employer demonstrates that the factor is not based on or
27 derived from prohibited wage discrimination, is job related
28 with respect to the position in question, and is consistent
29 with a business necessity. The bill defines "business
30 necessity" as an overriding legitimate business purpose
31 such that the factor relied upon effectively fulfills the
32 business purpose it is supposed to serve. This affirmative
33 defense shall not apply if the employee demonstrates that an
34 alternative business practice exists that would serve the same
35 business purpose without producing the wage differential.

1 The bill provides that affirmative defenses to a claim under
2 Code section 216.6A are not applicable unless one or more of
3 the defenses account for the entire pay differential that is
4 the subject of the claim.

5 EQUAL PAY TASK FORCE. The bill creates an equal pay task
6 force to study the extent of discriminatory wage disparities
7 in the public and private sectors, the factors that cause
8 such disparities, the consequences of such disparities, and
9 actions likely to lead to the elimination and prevention of
10 such disparities.

11 The bill establishes the membership of the task force,
12 including ex officio, nonvoting legislative members. The
13 department of workforce development shall provide staffing
14 services for the task force.

15 The task force shall submit a report regarding its findings
16 and its recommendations regarding potential actions for the
17 elimination and prevention of discriminatory wage disparities
18 to the governor and the general assembly no later than December
19 21, 2018.